THE BRAILLE MONITOR

INKPRINT EDITION

VOICE OF THE NATIONAL FEDERATION OF THE BLIND

The National Federation of the Blind is not an organization speaking for the blind--it is the blind speaking for themselves

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THE BRAILLE MONITOR

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THE DISABLED RIGHTS BILL: NFB LEGISLATIVE BULLETIN

The legislative program of the National Federation of the Blind has been under intensive review this fall. A great deal of work had been accomplished in the drafting of the legislation, and it should be completed by January. Basically, the problem has been how to adapt our legislative proposals to the new situation as discussed in President tenBroek's speech at Louisville (published in November MONITOR) and as embodied in the Convention's resolutions. The MONITOR will present and discuss the proposed legislation in monthly installments, beginning with this article's concentration on the rights of the disabled.

In accordance with a Resolution passed at the July 1966 Convention of the National Federation of the Blind in Louisville, steps have been taken to draft the enactment of Federal legislation to secure and protect civil rights of blind and other physically disabled persons. The Resolution states that there has been an increasing acceptance and implementation of the proposition that all Americans shall be granted equal opportunity and judged on their individual merits, but that despite this, discrimination against the physically disabled continues to exist. The Resolution therefore calls for the development and enactment of proposals, comparable to recent civil rights legislation, which would free the disabled from the discrimination to which they are currently subject.

The legislation has been drafted in two forms, which contain substantially similar provisions. The first is an act amending the Civil Rights Act of 1964 to extend its coverage to blind and otherwise physically disabled persons, while the second is a separate act entitled "The Rights of the Physically Disabled."

As it exists today, the Civil Rights Act of 1964 outlaws discrimination on the ground of race, color, religion, or national origin in certain areas to which Federal power extends. Title II forbids discrimination

on these grounds in places of public accommodation, such as restaurants, movie theaters, and hotels; Title III covers publicly owned facilities, such as parks and public buildings; and Title VI extends to any program receiving Federal financial assistance, such as housing, hospitals, and work-training programs. The amendments would extend the coverage of each of these three titles so as also to forbid discrimination on the ground of blindness or other physical disability, thus assuring the blind and disabled of the same treatment as the able-bodied.

Perhaps the most significant part of the amendments deal with private employment. Title VII forbids most employers, employment agencies, labor organizations and apprenticeship programs from discriminating and has created the Equal Employment Opportunity Commission as an enforcing agency. The grounds of discrimination forbidden already include sex, as well as race, color, religion, and national origin; and to these, the amendments would add blindness or other physical disability. The effect of this would be to forbid an employer from failing to hire a person for a job which he is competent to perform merely because he is blind or disabled. Also, a policy statement in Title VII would be amended to insure that there is no discrimination in Federal employment on the ground of blindness or physical disability.

The independent proposal, "The Rights of the Physically Disabled," applies specifically to "the blind, the visually handicapped, and otherwise physically disabled" and seeks to assure them of the same rights as are found in the civil rights legislation. The blind and disabled are granted free access to and full employment of all publicly owned facilities, as well as all means of public transportation and establishments serving the public, even if privately owned. The blind and disabled are also declared to have equal opportunity to secure Federal employment and to participate in all Federally financed programs. Finally, a section similar to Title VII prohibits discrimination against qualified persons because of blindness or other physical disability by employers, unions, employment agencies, and apprenticeship programs.

Both these pieces of legislation will be introduced in Washington at the opening of the next session of Congress.

BLIND ATTORNEY APPOINTED TO PRESIDENT'S COMMITTEE

The newest appointee to the President's Committee on Employment of the Handicapped is 34-year-old Rudolph V. Lutter, Jr., an attorney-advisor for the Federal Communications Commission in Washington, D.C.

Blind since childhood, Lutter has accepted his new role enthusiastically: "In view of many personal experiences, I feel most deeply about the employment of the handicapped and intend to be vigorous as the latest appointee to the President's Committee."

Lutter's personal history sets an impressive example. While attending the Overbrook School for the Blind, he organized the first school-wise student government. On full scholarship at Pennsylvania State University, he continued to actively participate in student government activities, as one of three nominated for the university's student presidency, by chairing a student political party and by serving on 28 major committees. Still, he graduated fourth in a class of approximately 3,200 when he received his B.S. with honors in sociology and government in 1956. At Harvard Law School, once more on full scholarship, he was elected annually to the student government, attaining the vice presidency in his senior year. He also sat on the Law School's five-man student court as associate justice and later, chief justice.

Upon receiving his LL.B. from Harvard in 1960, Lutter joined a Philadelphia law firm until 1962 when he moved to Washington to accept his present position as attorney-advisor, Rules and Standards Division of the Broadcast Bureau, Federal Communications Commission.

On a private European tour in 1964, he conferred with officials of the radio and television systems of Great Britain, France, Italy and Austria, comparing their systems, policies and approaches to ours. His bar memberships include the Federal and State Bars of Pennsylvania, the Bar of the District of Columbia and the Bar of the Supreme Court of the United States.

To add to his already-full itinerary, Lutter flies to New York City Friday evenings to teach a course, "Mass Media in American Society," at New York University.

MAINE CONVENTION

By Natalie Matthews

The first annual convention of the Maine Council of the Blind was held at the Twin City Motel in Brewer on Saturday, October 22.

The business meeting and election of officers were held at the morning session. The following were elected: president, Mrs. Natalie Matthews, Newport; vice president, George Call, Troy; secretary, Mrs. Jane Hutchinson, Augusta; and treasurer, John Barney of Clinton. Mrs. Wendall Folsom, of Brewer; Mrs. Ruth Gray, of Bangor; and Erwin Coy, of Lewiston, were appointed to the Board of Directors, representing their respective areas.

A noon lunch was served by Mrs. Raymond Collins, of Orington, and Wendall Folsom, of Brewer, assisted by the associate members.

The morning speaker was Nation Federation of the Blind Treasurer Franklin VanVliet, whose topic was "The Nation Federation of the Blind and its Affiliates, State and Local."

The afternoon session was devoted to the following speakers: Paul Rourke, director of Vocational Rehabilitation of the Blind, and Miss Marjorie Doyan, adult educator of the blind. Both speakers are with Eye Car and Special Services in the Department of Health, Education and Welfare. The final speaker of the afternoon was John Gomerley, Lieutenant Governor of the Lions Clubs of Maine. Each speaker welcomed a question and answer period.

Following the banquet, the master of ceremonies, Franklin VanVliet, introduced the dinner speaker, Dr. Lorraine Gaudreau, from the Department of Health, Education and Welfare.

Guests from New Hampshire participating in the convention activities were Mr. and Mrs. Franklin VanVliet, of Pennacook; Mr. and Mrs. Edward Vachon, of Manchester; Miss Irene De Fresne, of Clairmont; and Julian Berry, of Portsmouth.

Eight names were approved for active membership and a meeting was scheduled to be held in the Footman-Hillman Recreation Center in Brewer on November 20. We hope that enough interested blind persons will have attended to enabled us to form a new chapter in the Bangor-Brewer area.

Waterville was selected as the site for the 1967 Convention of the

Maine Council of the Blind. Meanwhile, the Maine Council of the Blind and its chapters will work toward better programs for the blind.

NATIONAL TECHNICAL INSTITUTE FOR DEAF PLANNED

The site of the first federally-sponsored, post-secondary technical insitute for a segment of the nation's disabled population -- the deaf -- will be the Rochester Institute of Technology, Rochester, New York. The decision to locate it there was made public by Secretary of Health, Education and Welfare John W. Gardner on November 14.

Authorized by a Congressional act signed by President Johnson last year, Gardner will enter into a contract with the Rochester Institute for the construction, equipping and operation of a National Technical Institute for the Deaf -- a residential facility for the technical training and education of deaf high school graduates.

"Such an institution should have as a major focus, not the segregation of the deaf in occupations considered suitable solely or even primarily for the deaf, but rather training tailored to help integrate the deaf into the working community as it now exists," reported U.S. Representative Hugh L. Carey in introducing the bill to Congress. "One of the most important needs in the education and training of the deaf is an institution which will offer deaf young adults at the post-high school level a varied choice of courses in technical fields which will result in employment at much higher levels of competence than is now the case for most of this age group."

According to committees of both the House of Representatives and the Senate, of the 3,000 deaf students between the ages of 16 and 20, Gallaudet College in Washington, D. C., can admit only 275 each fall. Gallaudet is the only institution for higher education of the deaf in the world -- and that is limited to the liberal arts. The Congressional committees compute that well over 400 students each year would be eligible for a program that could be offered in a National Technical Institute.

At a hearing before the Special Subcommittee on Labor of the House of Representatives, the legislation for the Institute's establishment was endorsed by schools for the deaf, state organizations of the deaf and leaders in the field of education for the deaf. Among the speakers were Dr. Leonard Elstad, president of Gallaudet College; Dr. S. Richard Silverman, director of the Central Institute for the Deaf, St. Louis, Mo.; and Rev. Thomas F. Cribbin, International Catholic Institute for the

Deaf, Brooklyn, N. Y.

Because no one state has sufficent numbers of deaf children to merit the operation of such an institution, according to the bill's author, Representative Carey, it is a federal responsibility. When questioned on the House floor as to why the institute could not be affiliated with the National Institutes of Health, Carey answered, "[T]hose who are most expert in the field of education for the deaf want to disassociate this from the general field of a health problem. This is not a health problem. These are educable people, but they lack means of communication. They need people who are trained properly to advance their knowledge and intellects as other people can advance theirs."

Yet, the alternative to a segregated educational facility for the deaf, that of training the deaf in regular technical institutions, was not adequately explored. Those who testified simply argued that the deaf have "communication problems."

As projected, the Institute is to be affiliated with a major university for the administration of its program -- one specifically located in a large metropolitan area to serve the special needs of deaf youth from any community. The selected area must have a wide variety of nationally representative types of industrial activities available for training experience that will prepare the student to return home for employment.

For the past ten months a 12-member ad hoc National Advisory Board on the establishment of the Institute has been reviewing applications from approximately ten universities. The first director of the Division of Handicapped Children and Youth in the U.S. Office of Education, Dr. Samuel A. Kirk -- now director of the Institute for Research on Exceptional Children, University of Illinois -- has headed the board.

HEW Secretary Gardner's decision as to where the Institute should be located, based on the Advisory Board's recommendations, had been expected to be announced since early October. Now that the Rochester Institute has been chosen, it will take three to four years for the construction and equipping to be fully completed and for the National Technical Institute for the Deaf to have a complete curriculum. However, a limited instruction program will get underway much earlier.

BLIND WEST VIRGINIAN SERVES ON JURY

(From the 1966 Year Book of the West Virginia Federation of the Blind)

Thanks to the liberal thinking of Judge John W. Hereford, Sixth Circuit Court District of West Virginia, E. Sid Allen, a member of the Lighthouse Club of Huntington, and West Virginia's outstanding disabled American Veteran for 1966, was permitted to serve on the jury during a recent term of the above mentioned circuit court.

When Sid received his summons to appear as a prospective member of the jury he was surprised. When the time came to report for jury duty Sid was on time. After the judge talked with the prospective jurors he requested that anyone wanting to be excused should please stay. Sid, excused for the day, left the courtroom; however, before Sid left the courthouse, a sheriff's deputy caught up with him and informed him that he had been excused from serving on the jury. Sid insisted on talking to the judge to ascertain why he had been excused, especially after he had expressed his willingness to serve. After his meeting with the judge Sid was permitted to serve on the jury. To his surprise, the fact that he was blind was never mentioned during his conversation with the deputy sheriff nor with the judge.

Apparently the trial lawyers were pleased with Sid's service as a member of the jury, because during the entire term he was stricken from the jury only one time; but served on several juries during the term of court.

To many of our readers this may not be an outstanding achievement, but it does once again demonstrate that if the blind are only given an opportunity, by their deeds and actions they can prove to be competent men and women, able to successfully perform whatever task they are called upon to do.

COMSTAC IN ACTION

Not too subtly, the American Foundation for the Blind has incorporated COMSTAC screening tactics and standards in the publication of its 1967 Directory of Agencies Serving Blind Persons in the United States.

Published periodically since 1926, the Directory has normally included all agencies in existence that were doing anything for the blind. In a form letter addressed to executive directors of agencies for the blind, the American Foundation has now set "entrance requirements" for inclusion in the forthcoming Directory.

To qualify, an agency must be incorporated as a nonprofit organization, have a board of trustees and have at least one paid executive. A detailed four-page application was enclosed with the letter, demanding -- if the agency wished to be considered -- information pertaining to source of income, number of paid staff and/or volunteers, administration and agency memberships, besides data on services rendered to the blind.

The American Foundation plans to study all applications to decide which organizations "belong among the types of agencies normally listed in the Directory."

All of which boils down to one fact: instead of letting the blind individual, in using the Directory, decide for himself which organization would suit his particular need in a given situation, the American Foundation has taken it upon itself to pre-screen and thereby "guide" him toward "the chosen ones."

TRAINING BLIND IN TRADE-TECHNICAL SCHOOLS

By Charles R. Borchert

(From Rehabilitation Record, Sept.-Oct. 1966)

Can blind persons be trained alongside sighted students in a trade-technical school and then be sent out to compete for jobs in the industrial world? A demonstration project seeking an answer to this question is just completing its third year at the North Dakota State School of Science at Wahpeton, N. Dak.

So far, teachers, students, and employers feel that the program

is developing a "yes" answer. One evidence of the affirmative answer is that six of the seven blind students who were the first to complete the 2-year machine shop course last spring are working in competitive industrial jobs and doing well in them.

You may ask if these men learn to operate machines like metal lathes and milling machines. Yes, exactly that and more. The quality of their work is excellent by comparison with their sighted fellow students and the safety record is exceptional.

The six graduates hold varied jobs. A totally blind, married student from Rock Island, Illinois, is employed by the John Deere Co. in East Moline, Ill. A married man with two teenage sons is working in a privately owned machine shop in Waterloo, Iowa. A 23-year-old South Dakota farm boy is employed by the Cessna Aviation Co. in Wichita, Kansas. A talented folk singer from Kansas is a mchinist with the Westgo Manufacturing Co. of West Fargo, N. Dak. A fifth graduate, a former Navy man, is a quality control inspector on the Apollo moon project. This, as far as we can determine, is a first in this type of work by a blind person.

Some trade schools in the past have accepted blind students, but because no one community could supply a continuing number of these students, programs lacked continuity, and faculty interest lagged. Thus it was concluded that a training program based on attracting blind students from a wide area possibly could succeed where other attempts had failed.

The blind students are given no special favors -- and they ask for none. They spend 40 hours a week in shop and classroom instruction, the same as other students in the trade-technical courses. About half the time is spent in the shop while the remainder is spent on related subjects, such as communication skills, business fundamentals, applied science, industrial relations, sales psychology, mathematics, welding, and metallurgy. They work and study in the same area and at the same time as regular students and observe the same rules.

The only significant difference is that the blind students have individual instruction in their major course areas such as machine shop and the small engine mechanics courses. Class notes are taken in braille and the textbooks are all tape recorded. One of their two shop teachers is an experienced instructor of the blind; the other is a veteran teacher of auto mechanics.

The blind students are all men, ranging in age from 18 to 55.

Class instructors have observed that the determination and initiative shown by the blind students often amazes and encourages sighted

students in the same shop area to do better. "There's one thing about these (blind) boys," they note. "They don't goof off a bit. We can't find a job they can't do. Once we transmit a mental picture of the job to be done to their minds, your job is practically done."

The employer of one of our graduates has told us: "He runs the lathe and drill press and assembles equipment. In fact, he runs just about any machine we have in our shop. I would be more than willing to take on more of the blind graduates if they are qualified workers and come anywhere near this man's abilities."

N.Y. BLIND SUCCESSFULLY BACK MENTAL HEALTH AMENDMENT

For its support in urging the passage of an amendment to the New York State Constitution to bring the mentally handicapped under provisions already existing for the physically handicapped, the Empire State Association of the Blind was honored with an award by the Association for the Help of Retarded Children in an October 25 ceremony in Albany.

Two weeks later, on Election Day, the campaign to inform the public of the amendment's worth paid off in its overwhelming passage. The State is now authorized to loan money to private, non-profit organizations and associations for mental health facilities. The State may then use the resources of these organizations for the education and support of the mentally retarded, emotionally disturbed or mentally ill. Previously it could do so only for those with physical handicaps.

Also honored in the pre-election ceremony by the Association for the Help of Retarded Children, was the New York State Federation of Workers for the Blind.

Bill Dwyer, first vice president of the Empire State Association, accepted the award in a joint statement with Joseph W. Pike, Workers for the Blind president:

"When our present [New York] Constitution was adopted in 1938, it included the blind, the deaf and the physically handicapped. In fact, such inclusion of some of these handicapped persons even goes back to the Constitution of 1894. When the Constitution of provisions for the physically handicapped, the deaf and the blind was adopted, the problems of the mentally ill, the mentally retarded and the emotionally disturbed were not identified. Now that it is realized how much can be done for the mentally ill, the mentally retarded and the emotionally disturbed to bring

them into the stream of society, it is only right and reasonable that they should have the same consideration in the Constitution as the other handicapped groups."

The Empire State Association has resolved unanimously at its 1966 Convention to back this amendment's passage.

VRA SUPPORTS STUDY OF ARCHITECTURAL BARRIERS

(From the U.S. Department of Health, Education and Welfare)

The Vocational Rehabilitation Administration has announced a project to help open the doors -- literally -- for handicapped persons.

Searching for more ways to eliminate architectural barriers, the VRA approved a grant to the National League of Cities for a two-fold study which will examine state and local laws as well as the work being done by non-government agencies in reducing barriers.

The problem of gaining access to buildings affects a quarter of a million people in wheelchairs and a similar number of other persons wearing heavy leg braces. There are 5 million people with heart conditions. There are about 150,000 people with artificial limbs. And there are about 18 million people over 65 who would benefit by easier access to buildings.

It was the magnitude of the problem which last year prompted John W. Gardner, Secretary of the Department of Health, Education and Welfare, to appoint a National Commission on Architectural Barriers to work with VRA Commissioner Mary E. Switzer on seeking ways to solve the 'barrier' problem in the construction which lies ahead, as well as modifying present buildings with ramps, hand rails, lowered drinking fountains, and other measures developed by the American Standards Association (ASA).

Under the VRA-sponsored project, the National League of Cities will study state and local laws enacted to help the handicapped gain access to buildings. The League also will analyze data from several hundred large cities to determine how ASA standards are followed in local construction, and it will survey architectural firms to see how many are using the ASA standards.

The League will study local building codes dealing with architec-

tural barriers in about nine communities. Building and construction associations will be surveyed on policies to reduce barriers. Comparative cost information will be developed on the type of construction which does not penalize the disabled. The study, which is expected to take one year, will include a survey of the public's awareness of the problems which handicapped persons have in gaining access to buildings. The amount of the federal grant has not yet been approved, but is expected to be approximately $70,000.

GERMAN SCHOOL CELEBRATES 50th ANNIVERSARY

German federal, provincial, religious and educational representatives journeyed to Marburg October 8 to honor the German School for the Blind (Deutsche Blindenstudienanstalt) there, celebrating its 50th anniversary.

Its conception was molded in 1916 when its future director, Carl Strehl -- then still studying for his degree -- and Dr. Friedrich Pinkerneil -- later to be its president -- met as representatives of organizations aiding university-trained and professional people blinded in World War I. However, in exchanging their views, they realized -- as Dr. Pinkerneil told the anniversary-day audience, "a basically different attitude from the prevailing concepts of aid was the training of blind intellectuals to be fully capable of gaining a university degree."

Today the school is recognized as the center for education and rehabilitation of the blind in Europe, and its methods and facilites are studied by educators throughout the world.

Blind students and researchers studying in other schools and universities travel to Marburg to take advantage of its extensive braille library, containing some 50,000 volumes in all fields -- including musical scores and maps. Its resource materials are being continuously added to by its own braille publishing facility, which also has a translating section.

In cooperation with the Organization of Self-Assistance for the Blind and the Federal Ministry of Interior, the first German "hearing library" was set up at the school in 1954. Since then regional tape libraries have branched out. In both German and foreign languages, scientific and literary works are read onto tape by trained speakers and reproduced in the library's own studio. The tapes are lent, free of cost, to blind persons in and outside of Germany.

The nucleus of the campus is the Carl Strehl School which includes a private intermediate gymnasium (equivalent to an academically-oriented high school), a one-year higher trade school and a two-year commercial vocation school. All the school's departments are officially recognized by the government and end with fully valid degree examinations. Its facilities include a foreign language laboratory, a swimming pool, gymnasium and outdoor sports' field. Most students live in the school's modern dormitories; however, everything is done to avoid isolation from the sighted environment -- with students actively participating in public events, clubs and youth groups.

To guide the student in his course of study and his post-graduation plans, a vocational advisory office and an officially commissioned employment agency are run by the German School.

Speaking to the various officials and the open-house audience gathered at the anniversary celebration, Dr. Horst Geissler, the school's director since Dr. Strehl's retirement, discussed the blind individual's share in the future.

According to Dr. Geissler, the rapid increase in population indicates an appreciable growth in the number of blind and visually handicapped persons despite opthamological progress and prevention-of-blindness measures, even if the number is decreasing in proportion to the total population. With technical progress and increasingly wide-spread and thicker settlement, one's way of life is more strongly determined by mobility and urbanization than ever before. The result: ever increasing demands are placed on the blind. However, the expected increase in productivity also increases the economic and temporal possibilities of the individual blind person. He must therefore be enabled to make significant use of them. Man's conceptions are constantly changing, and the blind must be guaranteed a share in them.

We must avoid binding ourselves to a hard and fast system of the past, warned Dr. Geissler, and must remain open to what life teaches. These tasks demand the active participation and cooperation of the blind as a community, as well as of each one individually, with the generous and constant support of the public.

In his speech, Professor Strehl thanked all who had given him the trust and understanding enabling him to realize "the desires which had been slumbering" within him since he had lost his sight in a New York industrial accident in 1907: the desire to found a special institution to prepare those who sought a higher education and an intellectual vocation.

"We are in the middle of a century of radical change, of constant progress, and of ever newer understanding. May my successor, Dr.

Horst Geissler, with the help of all, succeed in adapting the Marburg Institute to the newest advances of science and technology in the time to come. That is my most heart-felt wish," said Dr. Strehl.

The representative of Philipps University, Professor Wolfgang Straub, led the row of well-wishers. His congratulations were followed by those of the Hessian Minister of Employment, Welfare, and Health, Heinrich Hemsath; Johannes Duntze, representing the Federal Ministry of the Interior; Dr. Walter Viegener, the chief managing director of IHK Kassel -- an industrial concern; Provost Kurt Muller-Osten, of the Evangelical provincial Church; and the Bishop of Fulda, Karl-Heinz Hunten, for the Catholic Church.

Representing the German Federation of the Blind was its managing director of the Board of Directors, Dr. Alfons Gottwald. He praised Dr. Strehl's work as Federation director for many years and, as a birthday present, presented the German School with a recorder quartet performance.

"In honor of your service in working with the blind at home and abroad, we present you, Dr. Strehl, with the gold Medal of Honor, which is for the first time given to a civilian blind person," announced the chairman of the Federation of War Blind in Germany, Dr. Franz Sonntag.

The Federal Deputy from Marburg, Dr. Ludwig Preiss, who had driven from Bonn to Marburg especially for the occasion, promised that he would always place the interests of the German School for the Blind very high.

NEVADA CONVENTION

By Catherine Callahan

The Nevada Federation of the Blind held its annual convention at the Nevada Hotel in Ely, October 28, 29 and 30. Mrs. Peggy Stevenson, secretary of the Ely chapter, was chairman of arrangements for the convention and did a tremendous job in preparing a very fine convention.

Among the speakers at the various sessions were: Richard K. Cassidy, chief of Adult Services, Nevada Division of Welfare; Mary C. MacKay, district administrator, White Pine County, Nevada Division of Welfare; Perry Sundquist, N.F.B. Board of Directors; Mervin J. Flander, supervisor, Division of Services to the Blind, State of Nevada; Kenneth

Jernigan, first vice president of the N. F. B.; and Ella Mae Peterson, R.N., administratrix, White Pine General Hospital.

Saturday afternoon, around table discussion was led by Kenneth Jernigan, Perry Sundquist and Mervin Flander, which was characterized, as was the whole convention, by a lively exchange of information on services, blind aid, and problems of local chapters.

Kenneth Jernigan was the featured speaker at the Saturday evening banquet, which was M.C.'d by K.O. Knudson, with the Mayor of Ely and other distinguished citizens of White Pine County as guests.

Sunday morning the members heard the first reading and voted their approval of a new stream-lined constitution for the Nevada Federation.

Sixteen legislative resolutions were passed, which presage an active legislative session for our Nevada members.

Honorary memberships were given to Mr. and Mrs. Earl Church of Reno. Although Earl and Grace are no longer active in the organization, many will remember their gracious assistance and hospitality as they opened their doors to make a home away from home in Reno for Federationists from local, state and national organizations.

Another honorary member this year is Opal Ellis, who for many years has given unstintingly of her time and energies in secretarial work and every other kind of assistance, both at our state conventions and in the Las Vegas chapter.

The following officers were elected for the coming year: Audrey Tait, P.O. Box 710, Las Vegas, president; Carl Clontz, Hawthorne, first vice president; Cleo Fellers, Las Vegas, second vice president; Jim Ellis, Boulder City, secretary-treasurer; Ella Council, Las Vegas, chaplain. The Board of Directors includes: Peggy Stevenson, Ely; Catherine Callahan, Reno; Carl Clontz, Hawthorne; and Jimmy Lee Washington, Las Vegas.

Las Vegas was chosen as the convention site for next year, and Audrey Tait was elected delegate to the 1967 convention of the National Federation of the Blind, with K.O. Knudson as alternate.

NFB RECOMMENDATIONS ON SHELTERED SHOP REGULATIONS

The U.S. Department of Labor is preparing to issue regulations implementing the Fair Labor Standards Act 1966 Amendments -- the minimum wage bill -- on sheltered shops, as passed by the 89th Congress and signed by President Johnson this fall.

In the course of this decision, the Labor Department initiated a series of consultations with organizations concerned with the problems of sheltered shops. On November 7 Russell Kletzing, NFB secretary, and John Nagle, chief of the NFB Washington office, met with Labor Department representatives in Washington, D. C. The proposals and points of view of the NFB were thoroughly explained and explored.

The following letter was sent to the Labor Department to recapitulate the National Federation of the Blind's position on the issues raised.

November 9, 1966

Mr. Clarence T. Lundquist, Administrator
Wage and Hour and Public Contracts Divisions
U.S. Department of Labor
Washington, D. C.

Dear Mr. Lundquist:

We are writing to you as a followup on the meeting held with your staff on November 7 to discuss regulations implementing the minimum wage amendments for sheltered shop workers enacted by the 89th Congress. We are summarizing here our recommendations as to the questions posed in the memorandum from Mr. Korn sent to us on October 26. For convenience, the questions for discussion are repeated, followed by our recommendations.

1. Section 14(d)(2)(A) grants an exception to the prescribed minimum certificate rate for workers engaged in work which is incidental to training or evaluation programs.

   How should "training" and "evaluation" be defined in this context, and what criteria should be used to determine the programs that qualify?

Recommendations

Section 14(d)(2)(A) of the minimum wage law provides an exception to the minimums provided for handicapped workers engaged in work which

is incidental to training or evaluation programs. The Secretary's regulations should be designed so as to avoid any abuse of this exception by which work that was not legitimately part of a training or evaluation program would be exempted. We believe that a training program should have the following characteristics to qualify for the exemption: (1) there should be a plan stating the objectives, nature, and duration of the training to be provided for each individual being trained; (2) the objectives of the training should be to develop a skill or occupational proficiency which would equip the worker for employment outside the workshop in competitive industry in the region in which he lives; (3) the program should have a qualified instructor and an established curriculum; (4) no training program should include the work of more than one year's duration in a sheltered workshop and after one year of such training work, a worker should be subject to the minimum wage provisions.

An evaluation program should have the following characteristics: (1) a systematic technique for evaluation by a properly qualified person; (2) an evaluation program should not last more than 6 months and still obtain the exception from the minimum wage.

The regulations to be issued by the Secretary under Section 14(d)(2) should establish the standards under which the state agency shall issue certifications; therefore, these requirements may be different from or more stringent than the establishments under a state rehabilitation plan for training. The same standards indicated above should apply to workers whether they are a part of a state rehabilitation program or not.

The requirement that training should have the objective of placement in competitive industry is strongly supported by the report of the Senate Committee on Labor and Public Welfare, Senate Report 1487, page 23, where the committee states, "The committee believes this amendment serves the purpose of improving the economic circumstances of handicapped workers, speeding their movement into fully productive private employment, and assuring that such workers are not exploited through low wages."

2. Section 14(d)(2)(B) grants an exception for multihandicapped individuals and others whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

> How should "multihandicapped" and "severely impaired" be defined, and what criteria should be used to determine who qualifies?

Recommendations

There are two problems to be solved in defining individuals whose

earning capacity is so severely impaired that they are unable to engage in competitive employment: (1) that this classification not be used as a method of evading the minimum wage requirements by including workers with good productive potential in this class, and (2) that this classification should not accomplish a permanent stratification of workers so that they are forever barred from upward movement into competitive employment. To avoid these evils, we suggest the following criteria: (1) new workers employed by a sheltered shop should not be classed as unable to engage in competitive employment until after a full evaluation, including an opportunity for training in the skills of competitive employment; (2) workers already in the shops should not be classed as incapable of engaging in competitive employment if they have not had a full evaluation of productive potential within the last 5 years in accord with current evaluative techniques used by the state vocational rehabilitation agency. Such an evaluation should meet the criteria of No. 1. In making a determination in this area, the earning record of the worker should not suffice to demonstrate lack of productive potential. It may, however, be considered along with full medical data, appropriate tests of skills, and other standard evaluative factors used by the state agency in evaluating non-workshop plans.

It is particularly important that earning alone should not be the basis of evaluation. Otherwise, the purpose of the 1966 minimum wage amendments to upgrade wages for handicapped workers would be voided for existing shop workers since those not now receiving the prescribed minimum would presumptively never be entitled to it. Further, the possibility or threat that workers may be discharged if shop managers are required to pay the minimum should not color the interpretation of the law, since it makes no provision for such an exception. Such an abuse can be dealt with be appropriate community action.

3. "Work activities centers" are defined in section 14(d)(3)(B) as "centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential."

   What criteria should be used to distinguish these centers from workshops?

   What substantiating information should be required?

   In light of the world "exclusively" in the definition, what suggestions do you have that would permit a workshop to carry on both a "therapeutic activities" program and a regular work program in the same location and still meet the prescribed definition?

Recommendations

Work activity centers: (1) such centers should be custodial facilities where work or production is not the main purpose; (2) such centers should be preferably be housed in separate buildings, but must be housed in separate rooms if there is a workshop in the same building. There should be no sharing of supervisory or other personnel, equipment, or other facilities with a workshop; (3) the average value of production less cost of materials for all workers in a work activity center may not exceed $500 per year, however, there should be no wage limitation on individual workers. A certificate setting a minimum wage for such centers should be issued by the Secretary; (4) an occupational therapist should be on the staff or should consult with the staff of such a center. Production schedules, type of work performed, sales and market procedure, and other factors should be considered in determining whether a facility is a work activity center or a sheltered shop. The following excerpt from page 23 of the Senate Report cited above clearly shows the congressional intention with regard to such centers: "The committee intends that work activity centers should consist of custodial activities or activities where the focus is one teaching the basic skills of living. This would not exclude any purposeful activity so long as work or production is not the main purpose."

4. Should the standards for work activities centers be different than for workshops? If so, in what respect should they differ?

   Should the principle of "commensurate" payment required for clients of workshops also be adopted for work activities centers? The amendments require that work activities centers pay wages which constitute "equitable compensation."

Recommendations

The requirements that wages be commensurate with similar wages for similar work in private industry should appy to work activity centers as well as to sheltered workshops. Also, the Department should fully enforce the requirement that contracts for work at such centers not be made at prices that constitute unfair competition.

5. The amendments call for a number of different kinds of certification: individuals in workshops employed at not less than the prescribed minimum; individuals employed in workshops at less than the prescribed minimum, with certification required both by the WHPC Divisions and by the appropriate State rehabilitation agency; and individuals employed in work activities centers.

   What suggestions do you have for certification procedures that

would not be burdensome and yet would meet the requirements of the law?

Should periodic renewals of the State rehabilitation agency certification be required or should the initial certification be accepted for the entire period an individual qualifies for an exception, regardless of the duration of such period?

Recommendations

Certificates to workshops and work activity centers should be issued annually. Certificates that a worker is in an evaluation or training program should, however, be issued every 3 months. It is particularly important to have periodic reconsideration of such a worker's status to insure that the training and evaluation will be purposeful and bona fide. Certificates for workers that have been classified as unable to engage in competitive employment should be issued annually. Every worker for whom a certificate is issued or applicable under the provisions of Section 14(d) should be informed of the category under which he is certified and, as evidence that he has been so informed, should sign a statement of the information that has been furnished to him. He should have a period of 30 days in which to submit his views on the proposed certificate to the state rehabilitation agency or to the Department. The regulations should preclude a request by management for a worker to concur in his classification in writing or otherwise.

We hope these suggestions will be given serious consideration in your preparation of the regulations. If you have further questions, please contact Mr. John F. Nagle.

Sincerely yours,

(signed) Russell Kletzing
Secretary

John F. Nagle, Chief
Washington Office

VENDING STAND SUIT IN MINNESOTA

(From the Minneapolis Star)

L. J. Theisen, a blind news dealer in the St. Paul post office, lost a Federal Court suit to be sole operator of vending stands in the St. Paul federal building.

Theisen, 1514 Hartford Ave., St. Paul, brought the action on the strength of what he contended was provided in the Randolph-Sheppard Act passed by Congress to give such exclusive rights to blind persons.

Federal Judge Earl Larson dismissed the action. He pointed out that while members of Congress "talked of giving blind persons" such exclusive right, "as ultimately enacted, the provisions of the Randolph-Sheppard Act contain no preference for operating vending machines by blind persons."

Theisen had brought the suit against the St. Paul Postal Employees Welfare Committee and Sigurd Bertelson, postmaster, as committee chairman, after the committee installed competing machines in the post office and the building's annex.

MISS-A-MEAL CONTRIBUTIONS

Contributions to the 1966 Miss-A-Meal Observance to further the work of the International Federation of the Blind have topped the thousand-dollar mark. As of November 9, the total received is $1,078.05.

In New Jersey, the Associated Blind collected more than $50 through its first White Cane Ambassador Award Dinner. The members confirmed their reservations for the dinner by sending an "Ambassa-Gram" to their secretary-treasurer, Robert Owens, congratulating him upon winning the Associated Blind's 1967 "White Cane Ambassador Award." Those who couldn't attend instead mailed in contributions for literally having missed-a-meal -- a prime roast of beef dinner.

The Santa Clara County Club for the Adult Blind (California) took up a voluntary collection at its October meeting, and then voted to match the amount from its treasury.

Chapter donations continue to arrive. The latest are from Arkan-

sas, Arizona, Washington, Connecticut, Ohio and California.

Several individuals formed their own ad hoc "contributing organization," as did a blind man who shines shoes in a barber shop. Included with his donation were those of the shop's four barbers.

The main body of contributions is still those that arrive in envelopes of one or two dollars from concerned individuals. Although many cannot afford what they send, all write confidently of their belief in the future of the International Federation of the Blind and are proud of what they can do to be a part of that future.

PORTRAIT OF TAPE READERS

By Carolyn Hellner

This article is for the curious only -- those who listen to the MONITOR on tape and wonder who are the girls behind the rich, dramatic voices.

Nancy Miller and Lois Newman are two striking brunettes who, while trying to succeed in Hollywood, have volunteered their talents to the Active Blind of Los Angeles for the last two years.

From where do the girls come, what are they now doing and what do they hope to do? Let them tell you themselves in an informal interview.

"I was born in Chicago," began Lois. "I studied and graduated in Theater Arts at De Paul University. After graduation I did some radio work and then went to New York where I did a couple of off-Broadway shows.

"Oh, I forgot to tell you that as a little girl I lived in southern Arizona on an Indian reservation -- the Papagoes. My father was a doctor there.

"From New York, I came to Hollywood and continued my dramatic work. Of course, I did some secretarial work to fill in the gaps. As you know, the last role I had was in 'The Deputy' at U.C.L.A. Naturally, it was here that I met Nan; we both appeared in the same play, 'The Bad Seed.'

Now, Nan, how about you?

"Well," said Nancy, "I am one of those rare individuals, a native -- I was born in Los Angeles. I specialized in drama at Los Angeles City College and did considerable stage work after graduation. Then my aims began to change; I became interested in the field of production. My first Hollywood job in this line was as a girl Friday to Red Skelton. I loved the work and have been in it, in various capacities, ever since. Last year, I worked for the agency that did the Danny Kaye Show commercials."

How did you two start volunteering with Active Blind?

"It was through a friend of mine who had done reading and driving for another blind organization," answered Nancy. "Lois started driving about the same time, but somehow I became more involved. Because of my job hours, I was even able to drive for Active Blind's Center, REAP. Then I became interested in recording for school needs at Active Blind -- text books, fiction, non-fiction, drama and poetry -- and the first thing I knew, we were taping for the Active Blind."

"And the next thing we knew," chimed in Lois, "we were recording the MONITOR."

What are the mechanics of recording?

Nancy continued: "Dr. tenBroek sends a manuscript to Tony Mannino. I pick up the manuscript there, take it home, and do the recording in a couple of evenings. Then I take the master to Nick James who makes a copy for the Active Blind Library. We do this in case one is lost in the mail. Then I send the master copy to the Braille Library of Kansas City. The numerous duplicates are made by the Century Recording Company there, and sent all over the United States, at the expense of the National Federation of the Blind."

"Don't forget," interrupted Lois, "to mention the Alhambra Lions Club. They gave Active Blind two tape recorders and a wonderful budget for buying tapes."

"And, please don't forget," added Nancy, "to tell the MONITOR listeners that we enjoy our recording sessions and would love to hear from them through the Active Blind if they have any suggestions for us."

Now when you hear the word, "Read by Nancy Miller," or "Read by Lois Newman," you will know the girl behind the voice.

COLORADO CONVENTION

By Ruth Ashby

The Colorado Federation of the Blind held its twelfth annual convention on November 5 at the American Legion Hall, Denver. It was unusually well attended, and we were treated to a most interesting program.

After the business part of the convention was taken care of, we had a most interesting talk, "An Eye to the Future," by Dr. Louis Selyei of the research department of the Colorado University Medical Center. Our next speaker was Wilbur Fulker, principal of the Colorado School for the Blind. His talk was on teaching visual concepts to the blind. In the afternoon we had a panel discussion on the education in residential and public schools. Taking part in the panel were Mr. Fulker and a pupil from the School for Blind in Colorado Springs, and a resource teacher and pupil from the public schools of Denver. Many questions were asked from the floor and a great deal of interest was shown.

Robert B. Keating, Denver Councilman and attorney, talked on "The Blind Citizen." A great part of his talk was concerning the National White Cane Law. Immediately after Mr. Keating's talk the convention passed a resolution to do all possible to get the White Cane Law passed by our legislature when it convenes in January.

Other resolutions passed by the convention were: 1) that we donate $100 to THE BRAILLE MONITOR; 2) that we donate $100 to the Colorado Optometric Center; 3) that we donate $50 to Mr. Fulker to be used in making models and raised diagrams, etc. in his teaching; and 4) that we as an organization and as individuals do all in our power to help the Colorado Services for the Blind get some action on the new building they so badly need.

Ray McGeorge and Bert Johnson gave reports on the national convention at Louisville. President McGeorge also gave a report on the coordination council which he was asked to organize at last year's convention. The council is made up of all organizations of or for blind people in Denver and the metropolitan area. It has been a great success. Representatives from the Parents of Blind Children, from the Colorado Services for the Blind, from the Mile High Braille Transcribers of the Red Cross, and from the School for Blind at Colorado Springs were all at the Colorado Federation convention.

In the evening a delightful banquet was served. John Rayburn, a very popular commentator on KLX-CBS, gave a most interesting and

entertaining after-dinner speech. Later in the evening there was a social hour and dancing. A very good convention it was, and Ray McGeorge, our president, is to be highly praised and thanked for it.

ENCOURAGEMENT FOR THE BLIND SCIENTIST

A Paper presented before the joint meetings of the American Physical Society and American Association of Physics Teachers, New York City, 26 January 1966

By T. A. Benham

[Editor's note: Dr. Benham, who is blind, is an associate professor of engineering at Haverford College, Haverford, Pennsylvania.]

An intelligent blind youngster with a spark of ambition no longer needs to look to a future of making mops or brooms or caning chairs. A whole raft of new opportunities is open to him in scientific and related fields, provided he has access to a few ingenious aids designed to compensate for his lack of sight, and provided teachers, counselors, and potential employers recognize that by using special instruments he is able to cope with all but a very few of the situations he will meet in the laboratory.

Science for the Blind, a small, non-profit organization located on the Haverford College campus, has established a program to develop and make available instruments and aids which will enable blind scientists and technicians to play an active and efficient role in jobs formerly reserved for the sighted. Very often the instruments are the same as those used by the sighted, but they have been adapted to give either an aural or a tactile reading.

The Simpson Multimeter, for example, an instrument used in testing electronic equipment, has been modified so that a braille scale replaces the visual meter. As the blind technician moves the pointer around the scale, a tone, varying in intensity, indicates the desired reading. This meter is currently being used not only by blind technicians on the job, but also by students working in laboratories.

Numerous other instruments have been developed, some of which are also useful to blind people engaged in other lines of work. Second-hand (and therefore inexpensive) calculators have been adapted for braille

use. A continuity checker tests circuits in the lab, checks light bulbs and fuses, and tests household current. A capacitance bridge checks the values of electronic components. Thermometers with various ranges indicate temperature by tone, in the lab, in the photographic darkroom, in clinical practice.

In addition to such "stock" instruments, Science for the Blind has facilities to develop, whenever feasible, an instrument to meet any specific need that a blind person working in science or technology might encounter.

Of considerable importance to blind persons interested in science or mathematics is the field of computer programming. This particular vocation is so well suited to blind people that only a few aids are really needed. A computer can be easily trained to give braille readout, and with the use of a small light sensor a blind programmer can read the lights on the computer panel. A punched-card reader, developed at the University of Cincinnati, enables him to read the cards fed into the computer, and a small tape reader developed by Freiden Co., under direction of Science for the Blind, enables him to read punched-tape input.

It is extremely important that teachers and counselors of blind students realize the many opportunities available to the blind and see to it that their students are prepared for jobs which are attractive, challenging, and compatible with their ability.

MONITOR MINIATURES

At the invitation of the Maine Council of the Blind, Franklin VanVliet, treasurer of the National Federation of the Blind and president emeritus of the New Hampshire Federation of the Blind, presented a charter to the newly formed Androscoggin Valley Chapter of the Blind of Lewiston, Maine. The ceremony took place at the regular meeting of the Sebasticook Valley Chapter of the Active Blind in Newport on September 25. Erwin Coy of Lewiston is interim president of the new chapter.

Blind concert singer Clara Rowland, who is also president of the Youngstown (Ohio) Council of the Blind, is releasing her album of sacred songs this month. Costing $4 each, albums may be purchased from Mrs. Rowland at 1005 Franklin Street, Youngstown, Ohio 44502.

The Montana Association for the Blind is accepting applications for the position of Director of its 1967 Summer School for the Adult Blind, which will be held in Bozeman, June 25 to July 29. Applicants should

have background experience in work with the adult blind, some administrative experience, and give three references. Deadline for applying is January 1. Applications and requests for additional information should be sent to: Montana Association for the Blind, Box 536, Kalispell, Montana 59901.

From Kansas City, Missouri: Gwen Rittgers, active leader of the Progressive Blind of Missouri, has been teaching a course in braille transcription this fall to the Gleed Chapter of the Telephone Pioneers of America -- a service-minded organization of long-time telephone company employees. Graduates of Gwen's classes -- this is her third -- are then able to help blind school children in Kansas and Missouri.

The Jewish Braille Institute of America, through Dr. Jacob Freid, has sent the first braille watch to be awarded to the outstanding blind student in a Southeast Asian school. The first recipient will be a student in a Kerala, South India, school, with which Dr. Isabelle Grant has corresponded over the last two years. The award was conceived by Dr. Grant to fulfill the need and desire for a braille watch where it is a much coveted acquisition, a valuable possession and even a mark of dignity because of its high cost and scarcity.

From Vision, autumn 1966, journal of the Canadian Federation of the Blind: Shortly before Christmas this month a shooting competition between two six-man teams representing Australia and England will take place. All 12 marksmen will be blind, but their scores will compare with those of sighted shooters. The rifle is designed to set on a stand with the tip of the barrel pointing through a brass ring 1-5/8 inches in diameter. Behind the ring are two oscillators operating on one channel. When the rifle is aimed exactly in the center of the bull there is no difference in the frequency of the oscillators, but as the rifle is moved off the bull, the frequency of one of the oscillators is changed, and the change in frequency causes a high-pitched whine through headphones worn by the shooter. The blind shooter must sight the rifle until there is complete silence through the headphones -- and hold it steady as he squeezes the trigger. That equal skill is required for the two methods of sighting was illustrated in the last three shooting matches the Royal Victorian Institute of the Blind Rifle Club held against teams of sighted shooters. The blind team lost the first match 256 points to 259; won the second, 261 to 254; and lost the third, 239 to 273.

From the American Foundation for the Blind Newsletter, fall 1966: Salaries for professional and administrative occupations in work for the blind remain below those of comparable positions in other fields, according to a survey sponsored this year by the U.S. Vocational Rehabilitation Administration and the AFB.

THE RIGHT TO LIVE IN THE WORLD:
THE DISABLED IN THE LAW OF TORTS

By Professor Jacobus tenBroek

[Editor's note: Imagine the 92,100,000 licensed drivers in the United States today behind the wheels of as many moving vehicles on public streets, roads and highways, honking, speeding, plowing through red lights, pedestrian cross-walks and pedestrians. Add to this maelstrom, 5 million disabled pedestrians -- of which 400,000 are blind -- gingerly, optimistically seeking their way to work, shopping or home through an obstacle course of broken sidewalks and misplaced manhole covers. Multiply this chaos by the 49 different white cane laws -- those laws governing disabled pedestrians' rights versus motorists' rights -- and those, by their multiple interpretrations. Can safe traveling conditions for the nation's disabled exist within the overwhelming, tangled product of this "mathematical" problem? The search for its solution sets the scene for this month's installment of "The Right to Live in the World: The Disabled in the Law of Torts."

In installments since August, the MONITOR has presented Professor tenBroek's research into, and fresh analysis of, conventional tort laws governing the blind and otherwise physically disabled persons' freedom of movement in terms of dangers latent in stationary obstacles -- such as unguarded trenches and jagged building abutments. Last month, the emphasis shifted to the disabled's disadvantage in boarding and disembarking from public conveyances -- such as buses, taxis, planes and trains. Now, still another facet surfaces: the right to be free from the onslaught of automobiles, and the accompanying role of the white cane and guide dog as warning signals to motorists.

As an argument for the integration of the physically disabled into normal community life, "The Right to Live in the World" was originally prepared for the Law of the Poor symposium organized by Dr. tenBroek and held last February at the University of California at Berkeley. With other symposium papers, it is being published by the Chandler Publishing Company, San Francisco, in the volume The Law of the Poor, which Professor tenBroek also edited.

Complete copies of the article, in either inkprint or braille, are available from the National Federation of the Blind, Office of the President, 2652 Shasta Road, Berkeley, California 94708.]

E. Automobiles

Automobile law is the third area in which the law of torts pays special attention to the disabled. The rules of negligence as they stood at the advent of the automobile have been applied generally to the new means of locomotion—true, not without some adaptation, selection, and difference of emphasis.

The starting point is the pre-existing right of people to use the streets and highways. They have this right whether afoot or in automobiles and they can exercise it without distinction as to time or place. Thus, pedestrians and drivers were early held to have an equal right not only to the use of the streets and highways but to be in any part of them at any time.[314] When using the streets and highways, pedestrians and drivers alike are under an obligation to proceed in a safe and careful fashion so as not to infringe the equal rights of others or to injure them. As always, due care is determined by the circumstances.[315]

Rules of the road have been developed by custom, statute and ordinance to make it possible for the hordes of pedestrians and drivers to use the roads and streets efficiently, with maximum satisfaction and minimum injury to all in the exercise of equal rights. Otherwise, automobiles would have to proceed at the pace of the slowest pedestrian. These rules generally provide that the pedestrian has the right of way in marked cross walks, at intersections, and on the side of the road. Drivers have the right of way elsewhere. Drivers and pedestrians alike must proceed with due care even when they have the right of way.[316] When they do not have the right of way, they may still proceed but must do so with care appropriate in the circumstances, including the circum-

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[314] Apperson v. Lazro, 44 Ind. App. 186, 87 N.E. 97 (1909); McLaughlin v. Griffin, 155 Iowa 302, 135 N.W. 1107 (1912); Warruna v. Dick, 261 Pa. 602, 104 Atl. 749 (1918); Dougherty v. Davis, 51 Pa. Super. 229 (1912).

[315] Rush v. Lagomorsino, 196 Cal. 308, 237 Pac. 1066 (1925); Fahey v. Madden, 58 Cal. App. 537, 209 Pac. 41 (1923); Carpenter v. McKissick, 37 Idaho 729, 217 Pac. 1025 (1923); Stotts v. Taylor, 130 Kan. 158, 285 Pac. 571 (1930); Button v. Metz, 66 N.M. 485, 349 P.2d 1047 (1960); Feltner v. Bishop, 348 P.2d 548 (Wyo. 1960).

[316] CAL. VEHICLE CODE §§ 2.1950, 2.1954 (Supp. 1965). See also ILL. ANN. STAT., ch. 95½, § 172(c) (Supp. 1965); N.Y. VEHICLE & TRAFFIC LAW § 1154; TEXAS REV. CIV. STAT. art. 6701d, § 79 (1960).

stance that others have the right of way.[317] In view of the apportionment of rights of way and alternate rights to use particular portions of the streets and highways, the equal character of the rights of pedestrians and drivers has gradually disappeared from the rhetoric of judicial opinions.

The disabled have the same right to the use of the streets and highways that other people do. When they exercise the right, they too must proceed with due care in the circumstances, including the circumstance of their disability. In 1909, an Indiana court, in a case involving an infirm and defectively sighted plaintiff who was run down by the defendant's automobile, held that the plaintiff had a right to be on the highway unattended and was bound to use only ordinary care when there.[318] The pedestrian and the car had the same right to the road and must not infringe each other's use.[319] Since the defendant had so infringed the right of the plaintiff by negligently failing to pay proper attention to his presence on the highway, judgment against him was sustained. In 1912, in a leading case[320] the Iowa Supreme Court, affirming a judgment for a plaintiff who was struck by the defendant's automobile, explicitly applied the rule in *Hill v. City of Glenwood*,[321] a 1904, blind plaintiff, defective sidewalk case. In the 1912 case, the plaintiff, who had been blind for five or six years and who was familiar with the streets of the town, walked along the main business street and waited to cross at the corner. He let a buggy go by, listened, heard nothing more, started across, and was struck. The court held that the plaintiff had done all he was required to do.[322]

As to contributory negligence in this area, the courts generally follow the line restated by the New Hampshire Supreme Court: "[T]he [reasonable man] standard has been flexible enough in the case of the aged and physically disabled persons to bend with the practical experiences of every day life. The law does not demand that the blind shall see, or the deaf shall hear, or that the aged shall maintain the traffic ability of the young."[323] The reasonable man standard does require that the dis-

[317] CAL. VEHICLE CODE § 1951, NEW YORK VEHICLE & TRAFFIC LAW, §§ 1151, 1154; ILL. ANN STAT. ch. 95½, §§ 170-175, especially § 172 (Supp. 1965); PA. STAT. ANN. tit. 75, § 1039 (1959); TEX. REV. CIV. STAT. art. 6701d, §§ 33-34, 82 (1960); N.C. GEN. STAT. § 20-174 (1937). See also Pearson & Dickerson Contractors v. Harrington, 60 Ariz. 354, 137 P.2d 381 (1943); Rhimer v. Davis, 126 Wash. 470, 218 Pac. 193 (1923).

[318] Appersen v. Lazro, 44 Ind. App. 180, 87 N.E. 97 (1909).

[319] *Id.* at 186, 88 N.E. at 100 (1909).

[320] McLaughlin v. Griffin, 155 Iowa 302, 135 N.W. 1107 (1904).

[321] 124 Iowa 479, 100 N.W. 522 (1904).

[322] McLaughlin v. Griffin, 155 Iowa 302, 135 N.W. 1107 (1904).

[323] Bernard v. Russell, 103 N.H. 70, 77, 164 A.2d 577, 578 (1960).

abled make greater use of their remaining senses and faculties: that the blind listen more carefully, the deaf look more closely, and the aged or lame allow more space and time.

The distinctiveness of the problems of the deaf arises from the invisibility of their condition and hence the absence of notice to drivers. As a factor in travel accidents, especially those involving automobiles, deafness is almost automatically considered exclusively in terms of the standard of care of the deaf person or, in other words, of the negligence of the deaf plaintiff. The deaf pedestrian who puts himself in a place of danger by walking along a streetcar track must, on peril of being found contributorily negligent as a matter of law, look backward at suitable intervals as well as forward.[324] If he walks diagonally across the roadway on a clear but dark night, he must, at the same peril, be sufficiently watchful of his surroundings to discover that a car with lights aglow, moving at a lawful speed and on the proper side of the road, is approaching him from his right rear.[325] And if he should happen to stand in the middle of a country road just wide enough for one car, the jury might very well think that he should "take a position facing across the road instead of along it so that he could see both ways, or one way as well as the other, by merely turning his head."[326] On the other hand, the deaf pedestrian in making compensatory use of his eyes need not continually look in all directions but may fix his attention on the direction from which the next danger is to be anticipated.[327] He is entitled to assume, moreover, that drivers will not exceed the speed limit.[328] If the pedestrian was otherwise in a position of right the fact that hearing would have saved him will not relieve the defendant of liability.[329] A deaf pedestrian who, approaching the corner, stopped, waited for the light to change, and then proceeded to cross the street, was found not contributorily negligent either as a matter of law or as a matter of fact when he was struck by a fire truck responding to an alarm, moving north in a south-bound lane, with siren and bell sounding at intervals, the traffic on the block having been stopped.[330] The plaintiff, said the court, "used his eyes and did all that prudence and care would require under the circumstances. . . . [He] was entitled to assume that the green light gave him the right of

[324] Kerr v. Connecticut, 107 Conn. 304, 140 Atl. 751 (1928).

[325] Hizam v. Blackman, 103 Conn. 547, 131 Atl. 415 (1925).

[326] Hanson v. Matas, 212 Wis. 275, 279, 249 N.W. 505, 506 (1933).

[327] Robb v. Quaker City Cab Co., 283 Pa. 454, 129 Atl. 331 (1925).

[328] See, Covert v. Randall, 298 Mich. 38, 298 N.W. 396 (1941); Robb v. Quaker City Cab Co., *supra* note 327.

[329] Fink v. City of New York, 206 Misc. 79, 132 N.Y.S.2d 172 (Sup. Ct. 1954); *cf.* Wilson v. Freeman, 271 Mass. 438, 171 N.E. 469 (1930).

[330] Fink v. City of New York, *supra* note 329.

way. . . . [Plaintiff] is not to be penalized because of such affliction and not being able to hear siren and bell."[331]

Cases dealing with the contributory negligence of the lame are too few in number, scattered in jurisdiction, and some of them too old to be revealing of a judicial view of the special travel problems of this group. In a 1911 Arkansas case,[332] the appellate court held erroneous instructions to the jury that if the motorist ran into the pedestrian a prima facie case of the motorist's negligence was established. In holding, at this early stage of placing the automobile in its proper place in the law of torts, that negligence and contributory negligence were matters of fact, the court did not concern itself with the fact that the plaintiff was "a beggar on his crutches,"[333] except to say that such as he have the same right to the use of the streets as the man in his automobile. That the crutches gave notice to the motorist of the pedestrian's condition, and therefore of the care required of him in the circumstances, was not a subject of judicial comment.

The New Hampshire court, in a 1946 case,[334] held that the lame can only be required to do what they can do, and whether, with their limitation, they have exercised due care at an intersection is a question for the jury. In a 1954 Michigan case,[335] plaintiff, with a bad hip, and using a cane, was found contributorily negligent as a matter of law for failing to make "further observation in the direction of the approaching vehicle after proceeding into the lane of foreseeable danger. . . . Having discovered the oncoming vehicle, it is the pedestrian's duty to keep watch of its progress and to exercise reasonable care and caution to avoid being struck by it."[336] In Pennsylvania, with its fixation on contributory negligence, this rule was applied to a lame pedestrian with a cane who had not discovered the oncoming automobile in his careful observation before leaving the curb. The court held he must maintain a vigilant lookout all the way across.[337] In California, a cripple on crutches, crossing at an intersection and struck near the opposite curb, was held to have had a right to be where he was and to have exercised due care in the circumstances.[338] In that case, however, the plaintiff saw the defendant's car three or four blocks down the street and kept his eye on it all the

[331] *Id.* at 80, 132 N.Y.S.2d at 173.

[332] Millsap v. Brodgon, 97 Ark. 469, 134 S.W. 632 (1911).

[333] *Id.* at 472, 134 S.W. at 633.

[334] Bellemare v. Ford, 94 N.H. 38, 45 A.2d 882 (1946).

[335] Heger v. Meissner, 340 Mich. 586, 66 N.W.2d 200 (1954).

[336] *Id.* at 589, 66 N.W.2d at 222, citing Ludwig v. Hendricks, 285 Mich. 633, 638, 56 N.W.2d 409, 411 (1953).

[337] Rucheski v. Wisswesser, 355 Pa. 400, 50 A.2d 291 (1947).

[338] Florman v. Patzer, 133 Cal. App. 358, 24 P.2d 228 (1933).

way. But for the fact that the defendant was speeding, the plaintiff would have made it across.

In the case of the blind, relatively less emphasis is placed on the conduct of the pedestrian and more on that of the defendant: less on contributory negligence and more on the higher degree of care owed by the defendant.[339] The courts uniformly hold that the totally blind and the partially blind are entitled to rely upon the protection of traffic signals at intersections,[340] and that this is true whether they detect a change in the signal by the sound of a bell,[341] by notice from others that a light has changed,[342] or presumably by their realizing that other pedestrians are starting across and that cars have stopped. At intersections not controlled by traffic signals and when crossing streets elsewhere than at intersections, whether the blind or defectively sighted pedestrian was exercising due care in the circumstances is a question which the appellate courts direct be left to the jury.[343] The *American Law Reports* remarked upon the penalties of being partially blind as against being totally so.[344] Contributory negligence of the totally blind pedestrian, in being struck by a motor vehicle, is ordinarily left for the jury, and the jury usually brings in a verdict for the plaintiff which is then sustained by the court.[345] Not so with the partially blind. Their motor accident cases are also usually sent to the jury on the issues of negligence and contributory negligence, but the jury generally returns a verdict for the motorist which in turn the court usually sustains. If the *American Law Reports* has counted the cases correctly, and it is not entirely clear that it has with respect to the partially blind,[346] this may be a rule of life if not of law.

Though the disabled have the right to use the streets and highways and it is common knowledge that they exericse the right, yet the doctrine of foreseeability is seldom invoked in the automobile cases. A few early cases said that drivers must know what everybody else knows, that consequently they must expect that disabled persons will be among the pedestrians they approach and that they must proceed in a manner to

[339] Compare, however, Trumbley v. Moore, 151 Neb. 780, 39 N.W.2d 613 (1949), where a pedestrian with impaired vision was held contributorily negligent as a matter of law.

[340] *E.g.*, Griffith v. Slaybaugh, 29 F.2d 437 (D.C. Cir. 1928).

[341] Woods v. Greenblatt, 163 Wash. 433, 1 P.2d 880 (1931).

[342] Coca-Cola Bottling Co. v. Wheeler, 99 Ind. App. 502, 193 N.E. 385 (1935).

[343] See, *e.g.*, Muse v. Page, 125 Conn. 219, 4 A.2d 329 (1939); Bryant v. Emerson, 291 Mass. 227, 197 N.E. 2 (1935); Hefferon v. Reeves, 140 Minn. 505, 167 N.W. 423 (1918); Bernard v. Russell, 103 N.H. 76, 164 A.2d 577 (1960); Curry v. Gibson, 132 Ore. 283, 285 Pac. 242 (1930).

[344] Annot., 83 A.L.R.2d 769, § 3, at 775 (1962).

[345] *Ibid.*

[346] *Id.* at 776.

safeguard them against injury.[347] Other courts say, rather, that the driver has a right to proceed upon the assumption that all pedestrians in his path possess normal faculties and that they will exercise those faculties normally in the interests of their own safety.[348] Thus, while a person who digs a trench in a street is bound to anticipate that disabled persons will pass that way, and, accordingly, must put up adequate warning or guard,[349] that same trench-digger driving along the same street to work on the trench is not bound to anticipate the passage of those disabled persons, and hence need not drive his truck with precaution for their protection. At this point the rule of hazards in the street[350] is not applied to the driver of automobiles on the streets, although the basis for the rule would seem to exist in one case no less than in the other.

When the driver knows, or in the exercise of normal faculties should have known, that the pedestrian was disabled, he must exercise a high degree of care to avoid injuring him. The analogical origin and reasons are given by the Supreme Court of Louisiana: "The rule that motorists are held to unusual care, where children are concerned, applies also to adults, who, to the knowledge of the driver, possess some infirmity, such as deafness, or impaired sight, or who suffer from some temporary disability such as intoxication. The physical infirmity in one case, and the extreme youth in the other, affect the ability to sense impending danger and to exercise judgment in the emergency by the selection of proper means and observing the necessary precaution to avoid an accident."[351] In the leading case of *Weinstein v. Wheeler*,[352] the Oregon Supreme Court said that the driver "must use care commensurate with the danger" when he knows "or in the exercise of reasonable diligence ought to know" that the pedestrian is blind.[353] "It will not do to drive on under such circumstances and assume that one, who thus deprived of sight, will jump the right way."[354] The Oregon court at first said that the automobile must be brought to a stop but later modified this to the effect that the automobile must be stopped unless the exercise of due care will

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[347] See Warruna v. Dick, 261 Pa. 602, 104 A. 749 (1918); Doughtery v. Davis, 51 Pa. Super. 229 (1912).

[348] *E.g.*, FLEMING, TORTS 249 (3d ed. 1965). Aydlette v. Keim, 232 N.C. 367, 61 S.E.2d 109 (1950).

[349] Balcom v. City of Independence, 178 Iowa 685, 160 N.W. 305 (1916); Fletcher v. City of Aberdeen, 54 Wash. 174, 338 P.2d 743 (1959).

[350] See text accompanying notes 173-74 *supra*.

[351] Jacoby v. Gallaher, 10 La. App. 42, 46, 120 So. 888, 890 (1929).

[352] 127 Ore. 406, 271 Pac. 733 (1928).

[353] *Id.* at 414, 271 Pac. at 733-34.

[354] *Ibid.*

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[345] *Ibid.*

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[351] Jacoby v. Gallaher, 10 La. App. 42, 46, 120 So. 888, 890 (1929).

[352] 127 Ore. 406, 271 Pac. 733 (1928).

[353] *Id.* at 414, 271 Pac. at 733-34.

[354] *Ibid.*

be satisfied with something less.[355] Whether such care was exercised in the circumstances is a question for the jury.

When should the driver know that the pedestrian is disabled? The crutches or wheelchair of the lame are obvious notice to him. Hearing aids, on the other hand, are very inconspicuous. Uncertain step and irregular progress are not obvious signs of blindness in the pedestrian although they may call for further observation by the motorist. The guide dog and the cane are important as devices of notice to the driver, whatever their usefullness as travel aids to the pedestrian. They are greatly emphasized by the courts and no doubt are very influential with juries.[356] Short of statutory command, however, the courts have not yet held that it is negligence as a matter of law for a driver to run into a blind man carrying a cane or guided by a dog. In *Cardis v. Roessel*[357] the Kansas City court of appeals came close to doing that. There the plaintiff, proceeding along the sidewalk at a steady pace, carrying a cane in the hand nearest the street, walked into the side of defendant's car which crossed the sidewalk in front of him to enter a gas station. Said the court in sustaining a jury verdict for plaintiff: Defendant "saw, or could have seen, if he had looked, that which was plainly visible; and it was his duty to look and see."[358] In effect, the court held that the jury is entitled to find that the defendant saw, or in the exercise of reasonable diligence, should have seen, the cane if the plaintiff carried it.[359]

F. White Cane Laws: The Struggle for the Streets Revisited

The rights of blind and partially blind persons in traffic are the subject of the so-called white cane laws. Generally, but with some significant and many minor variations, these statutes (1) free the blind and partially blind carrying a white cane or being guided by a dog of contributory negligence, whether as a matter of law or of fact, (2) make the driver who runs into them in effect negligent per se and frequently guilty of a crime, (3) eliminate questions about whether the driver had notice of the pedestrian's total or partial blindness, and (4) generally give the blind and partially blind a legal status in traffic, thus making effective their right to use the streets in urbanized and automobilized

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[355] *Ibid*

[356] See, e.g., Cardis v. Roessel, 238 Mo. App. 1234, 186 S.W.2d 753 (1945); Curry v. Gibson, 132 Ore. 283, 285 Pac. 242 (1930).

[357] 238 Mo. App. 1234, 186 S.W.2d 753 (1945).

[358] *Id.* at 1239, 186 S.W.2d at 755.

[359] The case was submitted to the jury on the issue of humanitarian negligence under which it must be shown "that the plaintiff was in imminent and impending danger and oblivious thereof or unable to extricate himself, and that defendant saw and observed or could have seen and observed, plaintiff's said danger and his obliviousness or inextricability in sufficient time to have stopped, swerved, slowed, or warned." *Id.* at 1241, 186 S.W.2d at 756.

America. They substantially alter the law of negligence as it stood before the statutes, even in states where the courts extended the greatest protection to the disabled pedestrian.

However such laws have affected the legal status of the blind and partially blind, they have as a matter of fact greatly contributed to their safety. Knowledge that the white cane and dog are symbols of the blind is as yet far from universal but is becoming fairly well diffused. To the extent that this knowledge does exist, the cane and the dog provide effective notice and inspire efforts on the part of drivers to avoid their users and on the part of pedestrians and others to assist them.[360] The very reasons for the success of the white cane, ironically, are given by opponents of the statutes as arguments against them: They call attention to the blind and in fact make them a conspicuous class, advertising their helplessness, arousing public sympathy, and serving as a badge of their difference and limitations. According to this view, the more the knowledge of the significance of the white cane spreads, the worse the situation becomes for the blind.[361] The response of one blind man is that he would rather be conspicuous and alive than inconspicuous and dead. The organizations of the blind take the position, that far from being a badge of their separate, unequal and dependent status, the white cane is a symbol of the equality, independence and mobility of the blind.[362] The white cane has become the hall mark of the National Federation of the Blind.[363]

White cane campaigns are not confined to conveying word about the white cane laws. They are generally designed as well to inform the public about the social and economic conditions among the blind and the aspirations of the blind for full and useful lives. Such campaigns have long been organized around white cane days and white cane weeks sponsored by the National Federation of the Blind and by Lions Clubs. In 1964, the National Federation of the Blind secured a joint resolution by Congress asking the President to proclaim October 15 of each year as white cane safety day.[364] In his proclamations, the President has spoken not only of

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[360] When the New York legislature was considering enactment of a white cane law, a questionnaire on the merits of the proposal was distributed to chiefs of police, attorneys general, and safety officers in other states. A high proportion answered. The conclusion was that white cane laws, when properly publicized and administered, are a definite help to blind and sighted alike. *He Walks by Faith Justified by Law*, The Blind American, June 1961, p. 17; Liddle, *Mobility: A Survey, I, II, III*, The New Beacon, May, June, July 1964.

[361] *A White Cane Debate: Leichty vs. Taylor*, The Braille Monitor, March 1965, p. 16; *Legal Victory for Blind Pedestrians*, The Braille Monitor, Dec. 1964, p. 1; Bartleson, *The White Cane*, The Braille Monitor, Dec. 1963, p. 10.

[362] *He Walks by Faith Justified by Law*, *op. cit. supra* note 360.

[363] Vice President Humphrey's address at the Twenty-fifth Annual Convention of the National Federation of the Blind, The Braille Monitor, Aug. 1965, p. 8.

[364] 78 Stat. 1003.

the travel significance of the white cane but of its significance as a symbol of the ability of the blind to live "normal productive lives."[365]

Though the use of the staff or cane as a travel aid by which the blind person feels his way and avoids obstructions and holes is doubtless very ancient, and though we know from the cases[366] that active blind persons have employed such a staff or cane in this country for over 100 years, the white cane as a device for giving notice to drivers and others that the user is blind is strictly modern, though by no means strictly American, and is related to the fabulous growth in the use of the automobile, the thickening of traffic conditions, and the skyrocketing of accidental injuries to pedestrians whether able-bodied or not. The white cane statutes began to be adopted by the states in the 1930's.[367] Their enactment is directly traceable to activities of organizations of the blind and to Lions Clubs.[368] Today, due to the continuing activities of these organizations, forty-nine states have white cane laws explicitly covering the blind and partially blind[369] and one covering the "incapacitated" pedestrian generally.[370]

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[365] 29 Fed. Reg. 14051 (1964); 30 Fed. Reg. 12931 (1965).

[366] Balcom v. City of Independence, 178 Iowa 685, 160 N.W. 305 (1916); Sleeper v. Sandown, 52 N.H. 244, 250 (1872); Glidden v. Town of Reading, 38 Vt. 52, 53, 57 (1865).

[367] Cal. Stats. 1935, ch. 126, §§ 1-3 (1935); Idaho Code S.L. 1937, ch. 46, §§ 1-3, at 62; Mich. Stats. 1937, Act 10, at 13; Nev. Laws 1939, ch. 58, at 53; N.H. Laws 1939, ch. 65, § 1, at 56-57; N.J. Stats. 1939, ch. 274, § 1, at 696.

[368] William Taylor, a blind lawyer practicing in Media, Pennsylvania has been chairman of the National Federation of the Blind's White Cane Committee and an active leader in this work for over a quarter of a century.

[369] ALA. CODE ANN. tit. 36, § 58 (1940); ALASKA COMP. LAWS ANN. §§ 28.25.010-.040 (Supp. 1963); ARIZ. REV. STAT. ANN. § 28-798 (1955); ARK. STAT. ANN. §§ 75-631, 75-632 (1964); CAL. PEN. CODE §§ 643, 643a, 643b; COLO. REV. STAT. ANN. §§ 40-12-24 to 40-12-26 (1953); CONN. GEN. STATS. REV. § 211 (1949); DEL. CODE ANN. tit. 21, §§ 4144, 4150 (1964); FLA. STAT. ANN. § 413.07 (1955); GA. CODE ANN. § 68-1658 (1957); HAWAII REV. LAWS §§ 109-23 to 109-24 (Supp. 1963); IDAHO CODE ANN. §§ 18:5810-18:5812 (1947); ILL. ANN. STAT. ch. 95½, § 172a (Smith-Hurd 1957); IND. ANN. STAT. §§ 10-4925 to 10-4927 (1956); IOWA CODE §§ 321:332-321:334 (1962); KAN. GEN. STAT. ANN. § 8-558 (1949); KY. REV. STAT. § 189.575 (1962); LA. REV. STAT. § 32-217 (1962); ME. REV. STAT. ANN. ch. 22, § 132-35 (1963); MD. ANN. CODE art. 66½, § 194 (1957); MASS. LAWS ANN. ch. 90, § 14a (1949); MICH. STAT. ANN. § 28:770 (1954); MINN. STAT. ANN. § 169.202 (1960); MISS. CODE ANN. § 8203.5 (1942); MO. ANN. STAT. §§ 304.080-304.110 (1959); MONT. REV. CODES ANN. §§ 32.1143-32.1145 (1961); NEB. REV. STAT. §§ 28,478-28,480 (1956); NEV. REV. STAT. § 426.510 (1957); N.H. REV. STAT. ANN. § 263.58 (1963); N.J. STAT. ANN. § 4-37.1 (1961); N.M. STAT. ANN. § 64-18-65; N.Y. VEHICLE & TRAFFIC LAW § 1153; N.C. GEN. STAT. § 20-175 (1953); N.D. CODE ANN. tit. 39, § 39-10-31; OHIO REV. CODE ANN. §§ 4511.47, 4511.99E (1965); OKLA. STAT. ANN. tit. 7, § 11-13 (1951); ORE. REV. STAT. § 483.214 (1953); PA. STAT. ANN. tit. 75, § 1039 (1960); R.I. GEN. LAWS ANN. § 31-18-13 to 31-18-16 (1956); S.C. CODE § 44.0318-1, 44.9932 (1960); TENN. CODE ANN. §§ 59-880 to 59-881 (1955); TEX. REV. CIV. STAT. art. 6701e (1948); UTAH CODE ANN. § 41-6-80 (1960); VT. STAT. ANN. tit. 23, § 1106 (1959); VA. CODE ANN. §§ 46.1-237 to 46.1-240 (1950); WASH. REV. CODE §§ 46.60.260-.270 (1962); WIS. STAT. ANN. § 346.26 (1958); W. VA. CODE ANN. § 1721(373) (1961).

[370] WYO. STAT. ANN. § 31-163 (1957). The 1947 amendment which declared the cane

1. Jurisdictional Analysis of the White Cane Laws

A fairly typical white cane statute is that of Kentucky. It provides: "Whenever a pedestrian is crossing or attempting to cross a public street or highway, guided by a guide dog or carrying in a raised or extended position a cane or walking stick which is white in color or white in color and tipped with red, the driver of every vehicle approaching the intersection, or place where such pedestrian is attempting to cross, shall bring his vehicle to a full stop before arriving at such intersection or place of crossing, and before proceeding shall take such precautions as may be necessary to avoid injuring such pedestrian."[371] It is made unlawful for any person not totally or partially blind "or otherwise incapacitated" to carry such a cane or at least to do it in that position "while on any public street or highway."[372] The act is not to be construed as depriving totally or partially blind or "otherwise incapacitated persons" without a stick or dog of "the rights and privileges conferred by law upon pedestrians crossing streets or highways."[373] Nor is the failure of such persons to have a cane or dog "upon the streets, highways or sidewalks" to be "held to constitute nor be evidence of contributory negligence."[374] Violation is made punishable by a fine not to exceed twenty-five dollars.[375]

The provisions of the Kentucky statute as to: blindness or partial blindness; the otherwise incapacitated; the color of the cane; the position in which it is to be held; the alternative use of the dog; the duty of the driver; the crossing both of streets and highways; preservation of the rights of those without canes or dogs; declaration that they are not contributorily negligent; and the appending of a penal sanction, are all fairly common features in the white cane statutes.

In five states the benefits of the white cane statutes are extended only to those who are "blind."[376] Forty-three states extend protection to the wholly, totally or partially blind and the visually handicapped.[377] Fifteen

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and dog using blind to be included in the class designated as "incapacitated" was subsequently repealed in 1955. Wyo. Sess. Laws 1955, ch. 225, § 70. It thus appears the wholly or partially blind in Wyoming may not be "incapacitated" within the meaning of the statute. There have been no cases so construing the statute.

[371] Ky. Rev. Stat. § 189.575(2) (1962).

[372] Ky. Rev. Stat. § 189.575(1) (1962).

[373] Ky. Rev. Stat. § 189.575(3) (1962).

[374] *Ibid.*

[375] Ky. Rev. Stat. § 189.990(1)(16) (1962).

[376] Arkansas, Illinois, Minnesota, Nebraska, New Jersey. See note 369 *supra* for the applicable statutes.

[377] Alabama, Alaska, Arizona ("blind or industrial blind," which uses 20/200 or peripheral vision defect standard) California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio ("blind" is defined to include partially blind), Oklahoma,

states extend the protection of the white cane laws to those "otherwise incapacitated."[378] As these jurisdictions commonly specify that the protection of the statute shall extend to the "wholly or partially blind or otherwise incapacitated" the other disabilities embraced presumably are not of a visual character. Yet the other disabilities must be like blindness or partial blindness in that they involve traffic hazards which can be diminished by the use of the cane or dog.

The most popular device is the white cane, with or without a red tip, which is recognized in forty-one states.[379] Ten jurisdictions also recognize the use of metallic, chrome, aluminum or light-colored metal.[380] Only three states required the cane to be all white,[381] while five require the white cane have a red tip.[382] In eighteen states, the cane-using blind need only carry or use the cane to comply with the statutes' conditions[383] while twenty-six specify that the cane must be carried in the "raised or extended" position.[384] There are no cases construing this quite uncertain expression. Presumably the object of the requirement is to ensure that the cane is in such a position as to be visible to the approaching motorist or pedestrian. This object can be accomplished by the mere carrying or using of the long fiberglass white cane now coming into vogue. A few

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Oregon ("blind" is defined to include partially blind), Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin. See note 369 *supra* for the applicable statutes.

[378] Alabama, Florida, Kansas, Kentucky, Louisiana, Maine, New York, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia. See note 369 *supra* for applicable statutes.

[379] Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin. See note 369 *supra* for the applicable statutes.

[380] Alaska, Arkansas, Louisiana, Maine, Maryland, Mississippi, New York, Pennsylvania, Virginia, West Virginia. Not all types of canes are recognized by each of these states; each state listed does recognize one of the metallic type devices. See note 369 *supra* for the applicable statutes.

[381] Minnesota, Nebraska, Washington. See note 369 *supra* for the applicable statutes.

[382] Alabama, Arizona, Arkansas, Indiana, New Jersey. See note 369 *supra* for applicable statutes.

[383] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Michigan, Montana, Nebraska, Nevada, New Jersey, Oklahoma, Utah. See note 369 *supra* for the applicable statutes.

[384] Alaska, Delaware, Florida, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin See note 369 *supra* for the applicable statutes.

jurisdictions have altered the expression, substituting "at arm's length,"[385] "with arm extended,"[386] or carrying or using "an exposed cane."[387]

Thirty-seven states extend the protection of the white cane statutes to the user of the guide dog in the alternative.[388] States which permit the blind, the partially blind, and the otherwise incapacitated the use of the guide dog do not forbid its use by others,[389] unlike the common statutory practice with respect to the cane.

The duty imposed on the sighted pedestrian or motorist who approaches or comes in contact with the protected class of persons varies with the jurisdiction. Thirty-four states require the motorist to come to a full stop in all cases, and take such precautions as may be necessary to avoid accident or injury to the pedestrian.[390] Two of these states require the motorist to remain stationary until the pedestrian clears the roadway,[391] and Maryland requires the motorist, after stopping, to leave a clear path until the pedestrian is out of the street.[392] Virginia requires only that the motorist stop.[393] Eight states require the motorist to stop only when it is necessary to avoid accident or injury;[394] nine require the driver yield the right of way and/or take reasonable care to avoid injuring the protected pedestrian without specific mention of stopping.[395] Forty-one states impose the duty under the statute on the "approaching" motorist.[396]

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[385] Maryland, North Carolina. See note 369 *supra* for the applicable statutes.

[386] Minnesota. See note 369 *supra* for the applicable statute.

[387] Hawaii. See note 369 *supra* for the applicable statute.

[388] Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia. Of these, thirty-two require only the use of the "guide dog" or "seeing-eye dog" without more; the other five—Arkansas, Iowa, Michigan, New Hampshire, and Oregon—require the animal be "specially trained," harnessed, or in a particular position. See note 369 *supra* for the applicable statutes.

[389] See note 74 *supra* for applicable statutes.

[390] Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington (inferentially), Wisconsin. See note 369 *supra* for the applicable statutes.

[391] Nebraska, North Carolina. See note 369 *supra* for the applicable statutes.

[392] MD. CODE ANN. art. 66½, § 194 (1957).

[393] VA. CODE § 46.1-237 (Supp. 1964).

[394] Alabama, Alaska, Louisiana, Mississippi, New York, Pennsylvania, Texas, West Virginia. See note 369 *supra* for the applicable statutes.

[395] Arkansas, Connecticut, Delaware, Hawaii, New Jersey, Ohio, Utah, Wisconsin, Wyoming. See note 369 *supra* for the applicable statutes.

[396] Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts,

The duty imposed on the motorist to stop, take precaution, yield and the like is imposed on sighted pedestrians in nine states.[397]

Those states which require the driver to yield the right of way, or stop, or take reasonable care without specific reference to where or when, nevertheless require that deference be shown the disabled pedestrian, wherever he is found and within the space limitations prescribed by the particular statute. The specific mention of "approaching" adds nothing to the statutes, nor does the use of the term "upon observing." The motorist remains bound to that acuity of observation which graces the ubiquitous reasonable man, and so presumably will be charged with observing him whom he should have rather than him whom he did in fact. Similarly, the requirements of specific acts by the driver, such as sounding the horn and coming to a complete stop in all cases, do not provide greater protection to the disabled pedestrian than is secured by the duty of the driver to "take reasonable care." The driver is thus burdened with possible prosecution for the technical violation of a criminal statute, while his actions under the circumstances may well have been appropriate to the protection of the pedestrian from injury.

Three states provide that the driver must "immediately come to a full stop" when he "approaches within" a specified number of feet of the disabled pedestrian.[398] The distances specified are but three or ten feet, distances so short as to make it impossible for an automobile to stop or take other evasive action within them. If the driver need not anticipate the action commanded of him until he is within the distance mentioned, the only remaining question is the extent of the pedestrian's injuries; the driver's civil liability would apparently be strict liability, and his criminal liability cast in doubt because of the practical impossibility of compliance. Judges might reasonably interpret these statutes to require the driver to have come to a stop when he is three or ten feet from the pedestrian. Thus did Wisconsin solve this problem of draftsmanship: "An operator of a vehicle shall stop . . . before approaching closer than 10 feet . . . ."[399]

Thirty-six states provide that the protection of the statutes applies wherever the pedestrian seeks to cross the highway.[400] Thirteen states

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Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin. See note 369 *supra* for the applicable statutes.

[397] Alabama, Alaska, Arkansas, California, Colorado, Idaho, Indiana, Montana, Nevada. See note 369 *supra* for the applicable statutes.

[398] Georgia (three feet), Michigan (ten feet), Oklahoma (*knowingly* within three feet). See note 369 *supra* for the applicable statutes.

[399] WIS. STAT. ANN. § 346.26(1) (1958).

[400] Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan,

restrict the protection to intersections and crosswalks.[401] Only five states deal with the intersection or crosswalk controlled by an officer or signal.[402] Presumably it would follow that in the remaining states where the disabled pedestrian is given the right of way without reference to places where there are signals or officers, the disabled pedestrian prevails over any claim built on the command of the officer or the right conferred by the light. Nevertheless, though the Texas statute makes no mention of the signal-controlled crossing, the courts in that state appear unwilling to permit the blind person to recover in a civil action where he entered the crossing against the light.[403]

Twenty-two states provide that their white cane statutes are not to be construed so as to deprive the disabled pedestrian without canes or dogs of rights to which they would otherwise be entitled; nor are they to be so construed that the failure of disabled pedestrians to use canes or dogs shall constitute contributory negligence or evidence thereof.[404] Two states provide only that the white cane statute is not to affect other rights outside the statute;[405] one state, Illinois, uses the contributory negligence disclaimer without reference to other rights,[406] and the remaining twenty-five states have no saving clause of either type. In these states, presumably, absence of a saving clause will not be construed to deprive disabled pedestrians of rights which were theirs before the statute or to affect the contributory negligence law otherwise applicable to disabled pedestrians without compensatory devices.

In thirty-eight states violations of the white cane statutes are made a

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Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin. See note 369 *supra* for the applicable statutes.

[401] Alaska, Arizona, Louisiana, Maryland, Minnesota, Mississippi, Missouri, New York, North Carolina, Pennsylvania, Texas, Washington, West Virginia. Alaska, Maryland, New York, North Carolina, Pennsylvania, Texas and West Virginia restrict the statutory applicability to "crosswalks or intersections"; Washington to crosswalks only; Arizona, Minnesota, Missouri, to intersections only, and Louisiana, and Mississippi use the term "at or near" crosswalks or intersections. See note 369 *supra* for the applicable statutes.

[402] Arkansas says that the special protection does not apply at crossing places controlled by a traffic signal; Maryland that they do not apply at crossings or intersections controlled by an officer or a signal; North Carolina, and Virginia that they do not apply when the crossing is manned but that they do apply when it is controlled by a signal; and New Jersey that traffic signals are not to affect the pedestrian's right. See note 369 *supra* for applicable statutes.

[403] Meacham v. Loving, 285 S.W.2d 936 (Tex. Sup. Ct. 1956).

[404] Alabama, Alaska, Arizona, Florida, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Missouri, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, West Virginia, Wisconsin. See note 369 *supra* for the applicable statutes.

[405] New Hampshire, Oregon. See note 369 *supra* for the applicable statutes.

[406] ILL. REV. STAT. ANN. ch. 95½, § 172A (Smith-Hurd 1957).

criminal offense, the penalty generally being a small fine or short term imprisonment.[407] In eleven states the only recourse against the driver is a civil action for damages.[408]

2. Critique and Suggested Reform

The saving clauses in the white cane statutes preserving the rights of the blind non-users of canes or dogs in traffic as they existed in the law before the adoption of the white cane statutes seem prudent and precautionary rather than strictly necessary. That those persons and their rights are not mentioned in the white cane statutes would be a weak and artificial basis of statutory construction upon which to deprive them of the minimum protection afforded them under pre-existing law. On the other hand, the provision that failure to use compensatory devices is not contributory negligence or evidence thereof is innovative and desirable. The reason is hard to find for penalizing the disabled who do not use such devices, for whatever cause—lack of knowledge about their existence or how to use them, embarrassment at becoming conspicuous, or a finding by the individual that the devices are not helpful to him. It seems particularly unjust to penalize those who have not had or do not have the opportunity to receive training in their use. The right to live in the world should not be made to depend on the use of these compensatory devices.

For the same reasons, the provisions in the Arkansas and Arizona white cane statutes requiring the blind to use these devices and making the requirement penally enforceable should be repealed. If this objective is to be attained, it should be by educating the blind in the techniques of using the devices and in their values.[409]

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[407] Nineteen states provide that the violation of the statutory provisions is a misdemeanor, without specifying the penalty to be imposed upon conviction. Alabama, Arizona, California, Georgia, Idaho, Louisiana, Minnesota, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia. Eleven states in addition to making the violation a misdemeanor, specify the permissible bounds of punishment which is limited to a fine. Arkansas, Colorado, Connecticut, Indiana, Iowa, Kentucky, Maryland, Massachusetts, North Dakota, Tennessee, Texas. Eight states, after declaring violations to be misdemeanors, provide for money fines and/or jail sentences as punishment. Alaska, Florida, Kansas, Maine, Michigan, Mississippi, Missouri, West Virginia. See note 369 *supra* for the applicable statutes.

[408] Delaware, Hawaii, Illinois, New Hampshire, New Jersey, New Mexico, New York, Oregon, Utah, Washington, Wisconsin. See note 369 *supra* for the applicable statutes.

[409] The Arizona statute, while penally requiring the blind person to use a compensatory device, at the same time declares such unaided travel not to be contributory negligence or evidence thereof. Thus, the blind pedestrian is criminally liable for his failure to take the prescribed action to protect his person while he is not disabled in the civil courts from recovering for the injuries which he suffers as a result of his breach of a legal duty. There are also some odd variances in draftsmanship. In Arkansas, cane users are given the right of way "travelling along or across the streets and highways"; it is only when "walking along the highways and streets" without a cane that blind travelers commit a misdemeanor.

The provision about the way in which the cane is to be held—that it must be in a raised and extended position—should be eliminated. It is not necessarily adapted to increasing the visibility of the cane by drivers, unnecessarily denies the use of the cane while crossing streets and highways as a travel aid in the ordinary way to avoid obstructions and trenches, and creates a certain danger for oncoming pedestrians on crowded streets.

The requirement that the driver stop before coming within a specified distance of the disabled pedestrian or that, without mentioning the distance, to come to a full stop immediately upon approaching the disabled pedestrian, has the advantage of laying down an objectively determinable standard and one which obviously contributes to the safety of the pedestrian. Some question might be raised, however, as to whether this requirement is too mechanical and exacts of the driver more than is necessary for the protection of the pedestrian.

Making the provisions of white cane statutes penally enforceable against drivers does not add significantly to the achievement of the objectives of those provisions. It is hard to imagine that the penal sanctions here have a deterrent effect. The act of running into a disabled pedestrian is not usually a matter of deliberation or design. When it is, more drastic sanctions are in order and are already provided elsewhere in the law. The white cane statutes deal with accidents: with reducing their number by notice to the driver of the physical condition of the pedestrian; with allocating the cost of them, when they do occur, to the drivers and thence to the insurance companies; and with implementing the right of the disabled to live in the world by giving them a right of way in traffic and minimizing, if not eliminating, the ordinary concepts of negligence law. As a practical matter, too, law enforcement agencies are very reluctant to prosecute. It was only after a vigorous campaign of pressure by an organization of the blind that the Berkeley Police Department and the Alameda County District Attorney's office finally proceeded with a prosecution in 1965, under California's white cane law, which is located in the Penal Code and declares breaches to be a misdemeanor,[410] of a motorist who had run down and killed a blind white cane user at an intersection. The judge, who tried the case without a jury and found the motorist guilty as charged, sentenced him to one hour's probation.[411]

In Arizona, the penal sanction applies to the blind pedestrian without compensatory device when he is walking on a street or highway." It is only at intersections that the blind cane user is given the right of way; and it is only while the disabled pedestrian is "on the highways that failure to use dog or cane may not" be held to constitute prima facie evidence of contributory negligence. See note 369 *supra* for the applicable statutes.

[410] CAL. PEN. CODE §§ 643, 643a, 643b

[411] People v. McGlynn, No. C-8471, Municipal Ct for the Berkeley-Albany Judicial Dist., July 15, 1965.